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Opinion

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Jenkins Spirits Corporation, Inc.,
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July 17, 1958

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CONCORD, N.H.

State Liquor Commission
109 North Main Street
Concord, New Hampshire

Gentlemen:

Several days ago you advised this office that you expected in the near future to receive an application for a manufacturer's license from Jenkins Spirits Corporation, Ltd., of Manchester, and you desired our view upon such statutory provisions as bear upon the operation proposed to be conducted by the prospective applicant. We have had several discussions upon the subject, the latest on July 14 with representatives of Jenkins present; following which a letter was addressed to you by counsel for the Corporation describing the proposed method of manufacture. A copy of this letter was furnished to us.

You have invited our attention to the following statutory provisions: RSA 175:1:I; RSA 175:12; RSA 175:14; RSA 177:3; RSA 178:1, as amended by Laws 1953, 4:1; and RSA 178:2. You also noted RSA 176:11. Certain of these statutes have appeared ambiguous and contradictory one to another, hence your request for our opinion.

It is our understanding that Jenkins proposes to buy from distillers in the general market raw liquors of high-proof. These will be imported into the State and brought to its plant in Manchester. There the liquors will be processed and combined with other ingredients - some of which may be carbonated - and bottled as finished products. We are advised that the products proposed to be manufactured under present plans are screw driver, whiskey sour, tom collins, gin rickey, gin and tonic, vodka and tonic, rum and cola, ginger high ball, bourbon and soda and scotch and soda.

We are given to understand that the entire operation will be under strict United States supervision with a federal inspector on the applicant's premises at all times. The applicant advises that it is prepared to furnish such information and reports governing its operations as the Commission may require.

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In RSA 178:1 the Legislature has expressly provided that the manufacture of liquor may lawfully be undertaken in this State, under license and under such rules and regulations as the Commission shall determine. It is observed that the fee heretofore established for the manufacturer's license, \$2,000, was early this year reduced to \$500 (Laws 1958 [Special Session] 4:1). In our view the reduction in license fee may be taken as evidence of the intention of the General Court to encourage the manufacture of this product; although, of course, with due regard for the restrictions and limitations established by the other provisions of Title XIII.

At the outset of a consideration of the statutes, it is clear that the product which Jenkins proposes to import into the State comes within the definition of "liquor" as set forth in RSA 175:1:I. Having this in mind the question arises whether it must be purchased through the Commission as liquor "to be used for . . . manufacturing or mechanical business or in . . . scientific pursuits" as intended in RSA 175:12. It is our judgment that RSA 175:12 does not govern the purchase of its raw material by Jenkins, for the statute under consideration obviously relates to other than activities licensed under Title XIII. The manufacture of liquor is specially dealt with in separate provisions in Title XIII and rules and regulations governing it are authorized. We believe that RSA 175:12 relates to non-licensed manufacturing activities.

It is our understanding that the liquor to be used by the applicant, both in its raw form and in its finished product, will be transported in common carrier. Such carriage is authorized in RSA 175:1A which pronounces it

" . . . lawful for common carriers to transport liquor
. . . to licensees hereunder".

The next statute to which our attention has been invited is RSA 177:3. This statute is quoted as follows:

"Liquor Dispensed only through Commission. No liquor shall be sold in any state store, nor by any sales agent, nor by any person holding a license under RSA chapter 178, except liquor obtained from the commission."

A literal construction of this section would render entirely nugatory the provisions of RSA 178:1 and RSA 178:2 authorizing the manufacture of liquor; for, obviously, liquor sold by a manufacturer cannot be liquor obtained from the Commission. It is our view that RSA 177:3 is to be read in the context of the chapter in which it is found, a chapter

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ATTY-GENERAL

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which deals with the operation of State stores and the sale, generally, of liquor at retail. It is not held to apply to a licensed manufacturer.

The foregoing examination of the statutory law indicates that the operation proposed to be conducted by Jenkins as described to the Commission in conference and in a letter of counsel referred to above may be permitted under the law.

It is our understanding that the Commission has as yet formulated no rules and regulations for the manufacture of liquor, either under RSA 178:1 or under RSA 176:11. It would appear to us that the interest of the public to be exercised by the Commission in this regard is twofold: (1) the collection of the statutory fee, and (2) the taking of such steps as will assure that none of the liquor handled by the manufacturer, whether in raw or in finished form, is distributed within the State in an unauthorized or illegal fashion. We recommend, then, that prior to the issuance of a license the Commission promulgate rules and regulations which will provide to its satisfaction a means of holding the manufacturer strictly accountable for the liquor received, processed and sold by him. In passing, it is suggested that you may find that records similar to those required by the federal government to be kept by a manufacturer may suffice for this purpose.

We will be pleased to assist you, at your request, in the drafting of the requisite rules and regulations.

Very truly yours,

Warren E. Waters
Deputy Attorney General